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AUTHOR	Basco, Jeno; And Others
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ABSTRACT

This study analyses and summarizes the statutory regulations of various countries regarding the legal validation and use of certified microcopies in place of original documents. Descriptions are provided and rules summarized for the categories of: (1) the purpose of microfilming; (2) principle uses of microfilm; (3) the making of microfilm and copies (enlargements); (4) the legal safeguards of microfilm making--including the legal regulations safeguarding the keeping and storage of microfilm; (5) connection between microfilm, copy and enlargement, and original document; and (6) the degree to which microfilm, its copy and enlargement can be admitted as evidence at courts and other authorities. Recommendations refer to legal regualtions, selection of film material, material of enlargements, ensuring the identification of the microfilm with the original, checking the microfilm, registration of the microfilm; keeping, storage and maintenance of microfilm, replacement of original by way of microfilm--personal, objective, and legal criteria; and status of original after microfilm is made. The appendix contains a descriptive list of solutions practiced by 23 countries. (KP)

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LEGAL QUESTIONS OF THE APPLICATION OF MICROFILMS

by

Jenő Bascó, Iván Borsa and György Schelnitz

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PREFACE

The increasing use of microforms for purposes of preservation, and economy of space in all spheres of public and private life raises the question of the admissibility of these microforms as legal evidence. This preliminary study carried out by the International Council on Archives was commissioned by Unesco to meet the need for a comparative survey and analysis of the statutory regulations in force in various countries concerning the legal validity and use of certified microcopies in place of the original documents.

The survey was conducted by Dr. Iván Borsa, Secretary of the ICA Microfilm Committee, and Deputy Director-General of the Hungarian National Archives, assisted by Dr. Jenő Bacsó and Dr. György Schelnitz, both lawyers.

It is hoped to continue work on this question, the ultimate aim being to reach agreement on standardized practice at the international level.

LEGAL QUESTIONS OF THE APPLICATION OF MICROFILMS

At the Executive Committee meeting of the International Council on Archives in Brussels, in May 1973 it was the Chairman of the Council, Mr. Filip Ivanovich DOLGIKH (SSSR) who raised the question of the legal validity of microfilm - a problem, the solution of which involved archival interests. The Executive Committee entrusted the Microfilm Commission of the Council to examine the problem. The Microfilm Commission dealt with the question at its October 1973 session in Rome. At that time some members of the Commission had already made available the relating statutory rules of their own country. The Commission entrusted its secretary, Dr. Iván Borsa (Hungary) to gather information on the possibility of summarizing in a paper the results obtained hitherto. The secretary sent circular letters to the 40 odd correspondent members of the Commission with the request that where - in the correspondent's country - this question was covered, partly or wholly, by statutes, the copies of such statutes be submitted to him. Most of the statutory rules processed in the present study (see Annex) have been made available as a result of the said inquiry. Unfortunately, no answers were forthcoming from several countries. However, right from the outset there was no attempt to collect the complete material; thus, in order to avoid delay, no further request has been addressed to the States members.

The authors are of the opinion that the available material was sufficient for examining certain questions of detail.

I. Objectives

1.1 Up-to-date facilities and equipment made available as a result of technological progress now offer new possibilities for public offices, private enterprises and the business circles in facilitating and speeding up the business management, in eliminating the handling and storage problems of the accumulated records. One of these efficient means is photographing: i.e. the use of microfilm technique enabling to obtain reduced-size copies of the documents. In the course of technical development the microfilms have proved extremely suitable for replacing the original - books, documents, designs, drawings, bookkeeping vouchers, etc. - inasmuch as they may be examined just as easily as the originals; thus the original can be spared and stored at a safe place. The microfilms, as well as their copies and enlargements enabled the optional reproduction of the original, greatly increasing the latter's accessibility.

Along with the perfectioning of microfilming techniques, the advantages are becoming increasingly manifest. Simultaneously we are witnessing the fast expansion of the use of microfilm in commerce, economy and even in public offices. This created the demand that the copies made with the help of microfilm should replace the original in every respect. In other words it was claimed that the microfilm, or the copy made with its help could be utilized in itself, viz. without having to present the original.

This called for the regulation of the legal status (validity, admissibility in evidence) of the microfilms. Those States in which microfilms are used have partly legislated in the matter when the need arose, while some of them allowed the practice to find the suitable solution. Accordingly, the solutions are different; some of them are exploratory rather than final regulations.

This involved the necessity of a fundamentally uniform solution within the framework of an international regulation.

The statutory rules and customs of individual States - while they may only partly cover the utilization of microfilm, or may regulate a detail only - nevertheless offer a valuable help in arriving at common solutions. Considering that these solutions are analogous in several ways, we think that a uniform internal regulation of the fundamental questions can be reached.

Accordingly, it seems opportune to select those solutions which are regularly found in the practice of most of the States where the use of microfilm has been widespread. The final goal - also on an international plane - is to effectively ensure - with suitable guarantees - that the microfilm could replace the original in official (court, authority, etc.) proceedings in every respect.

Such a regulation could provide further possibilities for the widespread application of microfilm and a full exploitation of its inherent advantages: saving of space, time and expenditure. At the same time the information obtainable through microfilms must be effective, precise and fast; in addition - where necessary - the protection, safekeeping and secure handling of the original must be ensured.

1.2 The objective of the present study is to show, what are the possibilities today for the recognition of the legal validity (legal effect) of microfilms; i.e., to present the solutions found in the statutory rules made available for us by the States, or in their legal systems - according to information received from them.

It is a further objective of this study to summarize the results and, on the basis of this summary, to provide recommendations for the facilitation of the legal application of microfilms, as well as for the recognition of the legal validity of copies obtained by microphotography both within the given State and on the international plane. Of necessity, the condition of this consists of the creation of the norms of guarantee, for which the present paper wishes to make further recommendations - on the basis of the available material.

This study merely proposes to engage in the problems of the legal validity (legal recognition) of microfilms; therefore it does not touch upon the other legal problems that may arise in connexion with the preparation, reproduction, distribution of microfilms. Such problems could arise, in particular, in the fields of copyright law, publishing law, rights attaching to the person - moral rights - (such as right to the name, integrity, trade name, fair competition, etc.) further the State secrets, military secrets, trade or industrial secrets. The legal conditions relating to all these would fall beyond the scope of the present paper, which does not prevent the individual States to provide for all these norms within their national legal system, precisely in the framework of rules relating to the protection, reproduction, distribution, etc. of documents.

At present - owing to the widespread use of microfilm - the main purpose is to enhance its usefulness: this is where the present paper aims to be of assistance with the help of recommendations ensuring the legal validity of microfilm.

1.3 In the present paper the following working method has been adopted: each question is first presented, commented upon, next - basing on the available data - information is given on the solutions chosen in a given State; whether there is a statutory rule or case-law in the given State, or else, there is no regulation or the question does not even arise in the practice.

II. The Definition of Microfilm

1. The statutory regulations of the various States do not define in any clear-cut manner what is to be deemed as microfilm or microcopy. Neither does the judicial practice provide even an approximate information on this question. We may define the microfilm as a transparent, flexible material for the photographic reproduction of documents in reduced size or as a series of photographic reproductions on this medium that must be viewed optically and that may be used for additional microfilm copies or enlarged to make eye-legible prints.

A microfilm-photo may be made from a document of optional format, handwritten or printed text, drawing, picture, etc. These documents can be filmed by various reductions on different-sized film materials, depending on the original dimensions of the document and the photographic process. Since the authors intend to use the definition of microfilm exclusively as a reproduction, the present paper will not deal with the COM process (Computer Output to Microfilm).

Microcopying is one of the various processes summarized under the term reprography. The later concept includes the following processes: contact copying, reflex copying and the various mechanical reproductions of documents, as well as the coupling of these with mechanical or electronic selection (retrieval) methods. Thus, reprography and microcopying relate to one another as the whole and the part. The same relation exists between the terms microcopying and microfilm, inasmuch as microcopying is a broader category including (but not restricted to) photo-print (photographic paper) copy and paper enlargements. The present paper only covers the range of the legal questions related to microfilm.

2. After defining the concept of microfilm and its relation to reprography we should now examine, what groupings, what classifications can be made within this uniform concept: in other words, what kinds of microfilm can be distinguished.

2.1 One may speak of:

2.11 original silver negative microfilm (camera negative) which renders the original picture in a reversed tone;

2.12 film copy made of the camera negative;

2.121 silver copy, which usually gives a positive picture, as a rule of identical tonal value with the original. From the silver copy further copies can be made, each time the tone will be reversed, which means that the odd generation gives a negative picture, the even generation gives a positive picture;

2.122 diazo or vesicular copies provide always the same tone as the camera negative.

The full legal effect - i.e. replacement of the original - will always attach to the original microfilm and - subject to appropriate legal guarantees - to the microfilm copy made therefrom.

2.2 According to the outer appearance of the microfilm, there are:

2.21 microfilm reel (mostly having a length of 100 feet = 30.48 metres);

2.22 microfilm strip (a longer or shorter form resulting from cutting the microfilm reel);

2.23 microfilm jacket (formation of the microfilm strip into standardized sheet size);

2.24 microfilm aperture cards (microfilm mounted into punched cards) = single frames resulting from the splicing of the microfilm reel or from individual shots, mounted into a punched card;

2.25 microfilm sheet (containing several rows, and several shots in each row).

Regardless of its outside appearance the microfilm may be suited to replace the original document under any form. The various legal systems do not contain any restriction as to the format of microfilm which is mandatory when microfilming certain given documents; the format is determined by the technical conditions and considerations of expediency.

III. The Purpose of Microfilming

1. The quick recovery, utilization and distribution of the extraordinary mass of data is nowadays possible only by the use of information storage and retrieval systems. In addition to enabling such mechanized data processing, the microfilm also makes possible the compact storage, use and distribution of information in its entirety.

2. From the aspect of our present study, the principal purpose of making and utilizing microfilm consists of its credibility: in other words that the microfilm should render the true copy of the original with legal validity presenting, in addition, such advantages as will give preference to the use of microfilm over the other, eye-legible copying and reproduction processes. What are these advantages? First of all a considerable saving of space and storage means. When substituting the original documents by microcopies, a space saving up to 90 to 95 per cent can be achieved. As compared to the documents stored in a traditional manner, retrieval from microfilm - according to experience - is more or less time-saving. Microfilming is the only reproduction process which, in a reduced size, can render the information content of the original document in a perfect way. Apart from the said three favourable features, the microfilm possesses other advantageous properties. In the information provided by the Czechoslovak Federal Ministry of Metallurgy and Machine Industry about the guidelines of the Bill on the use of microfilm in document filing, as well as on the further handling of written and graphic information, the Ministry has pointed out that (i) it was impossible to insert into the sequence of microfilm frames other (genuine or false) texts; nor could such text be removed; (ii) the microfilming enabled the adoption of most up-to-date classing and retrieval techniques thus enhancing fast and reliable information. It should be further remembered that the microcopying enabled the combination of various systems: centralized or decentralized, it can be used as an entire system.

3. However, in addition to the said advantageous features, the making and use of microfilm also involves certain drawbacks. The most important among these is the costliness of microfilm technique. Microfilms (apart from infrequent exceptions - such as publishing) are made in a few copies only; thus the expenditure of the whole process is charged against these few copies. In addition, an equipment is necessary for studying the microcopy. Proper conditions for study must be ensured - always attaching to an apparatus, or even a location. Not more than one or two pages can be scanned simultaneously. The latter disadvantage can be partly eliminated by using several microfilms and several reading apparatuses at the same time, or by making prints legible by the naked eye.

Among the drawbacks there should be mentioned (also observed in the referred information on the rules of the said Czechoslovak Bill) that it is impossible to perform on the microfilm the physical or chemical analyses destined to determine the age and genuineness of the original document.

Another drawback consists of the fact that the microfilm being mostly black and white, it does not reproduce those parts of the original which were written by coloured crayon or colour ink.

4. In the field of law - legal regulation and practice - the making and use of microfilm and microcopy may have a threefold importance.

4.1 Statutory rules may permit that determined subjects-at-law need not keep or store the originals of documents - at least some types of documents - but should be allowed to make microfilms of them, while the originals are kept at a safe place, or else are destroyed - unless the statutory rule makes an exception. (The relating detailed legal regulations of the various States are outlined in Chapter VII). The basic problem in this field is that two contrasting trends are at work. Some States - for the purpose of control or other reasons - are interested that their subjects-at-law keep the original documents as long as possible; this results, inevitably, in the accumulation of the documentary material which, on the other hand, is not desirable. The task of the legal regulation consists of the harmonization of these two opposing interests.

4.2 Statutory rules may decree the microfilm registration (filing) of the records originating at various organizations or arriving there. The purpose of the register is to help to find the records fast and easily. Filing means that the official documents, (petitions, writs) are given serial numbers and entered in a registry book in their sequence (docketed). Registration is a legal fact, the precision of which lies in the interest of both the official organizations and the parties. The register book (records of files, sheets) are commenced every year on the first work-day of the year. The documents of an organization (agency) are entered in one register - mostly in the sequence of their receipt. The registry book shows the filing number of the case, the date of receipt, its subject-matter, annexes, the person in charge of the case, notices regarding administration of the document and other relevant data for the proceeding. Of the subject-matter of the cases an index of contents is kept, for the easier retrieval of the file.

The microfilm recording (registration) of the case documents does not eliminate the necessity of entering the data so as to permit the identification of the file.

4.3 A third possible field of application of microfilm in law is the case when, subject to proper legal guarantees, the microfilm is admitted in evidence in court or other authority proceedings (e.g. public administration), instead of the original document (see Chapter VI), and such microfilm is accepted as full proof. The power of evidence of the camera negative, the film copy made thereof or of the

enlargement is dealt with in Chapter VIII of the present paper. At this point we merely wish to mention in advance that, as regards the microfilm's admission in evidence the legal systems under scrutiny showed three distinct types:

4.31 microfilms have no validity in evidence;

4.32 in the given legal system the principle of free evidence having been adopted, the statutory rules do not contain particular provisions on the admission in evidence of microfilm at courts or by other authorities; in other words there is neither an objective nor a subjective bar to their admission in evidence;

4.33 certain determined subjects-at-law are entitled to introduce in evidence microfilms made of certain defined types of documents at court or with other authorities.

The court or other authority may, in addition to admitting microfilms in evidence, also use them in their own administrative processes: court (and other authorities') documents may be kept or stored on microfilms, or else can be filed on microfilms at the start of the proceedings.

IV. The Principal Uses of Microfilm

1. As mentioned before: microphotography shows considerable advantages when compared to other reprographic processes. The swiftness of photographing and the advantageous use of space have resulted, even so far, in manifold uses of this process both in State agencies as in other organizations. Ever more widespread applications of microfilming are becoming known: accordingly the range of its adoption is broadening all the time; thus we are witnessing a widening phenomenon.

2. In this Chapter the authors merely wish - as is evident from the title - to outline the principal uses. At this point we will disregard the actual regulations - positive rules valid in the various countries, but will sketch in principle the various possibilities of the uses of microfilm, in a certain grouping. As regards the positive-law rules of the various legal systems regarding the uses of microfilm in given fields: this will be dealt with not in the present Chapter but in Chapters VII and VIII.

3. We will outline the principal fields of application of the microfilm in the following groups:

3.1 in economic life (commerce, trade);

3.2 in the administration of justice;

3.3 in public administration; and

3.4 in other inistitutions.

ad 3.1 The economic organizations (individual firms, corporations, trading, industrial, transport companies, State-owned enterprises) may utilize the microfilm in their management as well as bookkeeping. A great significance attaches to the microfilm filing (docketing) of the documents and to the keeping and storage of bookkeeping vouchers of microfilms.

Banks and other financial institutions are resorting to the microfilm in the handling of their cheque business. Of small-size cheque slips several thousands can be microfilmed on a single reel. The use of microfilm has been also widespread in insurance companies.

ad 3.2 In the administration of justice and in criminal procedures the microfilm may be partly used as an instrument (means) of evidence, partly as a means of safe-guarding and storing documents.

ad 3.3 In the activities of the agencies of State administration, the applications of microfilms are found along two ways - apart from their uses in evidence: they might serve either the purposes of office management or of registration. Management can be simplified when the docketing, safe-keeping and storing of the documents is carried out with the help of microfilms.

At this point we would merely mention the types of documents that can be microfilmed in principle. These may include documents originating through the functions of the various State-administrative agencies, commercial organizations, banks and other financial institutions, health and educational organizations, etc. For instance the following can be microfilmed:

incoming and outgoing letters,

documents and files of former years,

bookkeeping vouchers from preceding years,

files of concluded transactions - grouped under each transaction,

the documentation of prices,

economic documentation,

technical documentation,

annual reports,

documents attesting the development and economic achievements of the organization,

files relating to personnel and labour organization,

product itemizations and catalogues,

licence and know-how descriptions,

technological specifications.

The microfilm registration may relate either to persons (e.g. personnel files) or to objects (e.g. real estate, automobiles etc.). In case of a large staff, or of a decentralized organizational structure, the microfilm may offer an important help to the precise conduct of the registers and for fast work.

ad 3.4 The microfilming of technical designs, of blueprints made by planning-designing bureaux and of the additional documentation of plans belongs to a special domain of microfilm technique. The microphotography of large-dimensional drawings and their subsequent re-enlargement to the original size in an impeccable manner requires special equipment, materials and techniques which are widely different from those adopted in other fields of microfilming. The microphotographing of technical drawings (designs, plan documentations) is a measure primarily destined as a safeguard against elementary disasters, securing these often valuable drawings; also it may serve the purpose of unification of various original sizes, in the form of microfilm. When mounted on mechanical punched cards, (so-called aperture cards) the systemation, handling and use of microfilmed drawings becomes infinitely simpler and more economical than the handling of the original size designs.

In the field of postal administration, the microfilm-systemation of the telephone directory should be mentioned. In this activity, requiring the filing of many and varied data, the microfilming technique offers the simplest way for the recording of subscribers and telephone numbers. The microfilm technique has an even greater significance in the edition of the telephone directory than in the inquiries department.

As regards the chronological order: the public libraries and archives were those which made the best use of microfilm, since they did not have to lend valuable books, documents, but only to make the microslide copies of the originals available to the readers or researchers. The widespread use of microfilm in libraries and archives - mainly in the European countries - was concomitant with the Second World War, particularly as a safeguard of the original stock and security measure. While in archives mostly reels, less frequently fiches, in library practice nearly all standard microcopies are used. Book-lending with the help of microfilms is a broadening form of library application; this relies on the microphotographing of the entire catalogue system.

As regards the institutions dealing with scientific and technical documents, in addition to those mentioned already, the following will frequently resort to microfilms: patent libraries, statistical offices, the army, the research institutes, the documentary centres, information centres, schools of higher education and, last but not least, the newspaper editorial offices.

In recent years some of the publishing firms have been using microfilms to publish annexes originally printed in offset-printing and subsequently microfilmed and placed in satchels within the volumes. Microfilms are used to publish items where the normal printing method would be uneconomical because of the small number of copies printed, or because of the voluminousness of the matter. This helps to reduce production time and expenses. Microfilm publications by archives have become widespread too.

As mentioned before: the authors have no pretence at completeness; the aim has merely been to draw the attention in this Chapter to the manifold possibilities inherent in the applications of the microfilm. In the course of application it will become important, whether the microfilm is vested with the authenticity that is required for substituting the original.

V. The Making of Microfilm and its Copies (Enlargements)

1. Anyone can produce a microfilm (either by domestic means or in a plant specialized therefore, photographer's etc.). Obviously, however, the quality and legibility of the microfilms made by different methods will also vary: not every one of them will be capable to render the original in a true manner. Still, the true reproduction of the original document is the condition for enabling the microfilm to be accepted in lieu of the former. Thus, the rôle of the person having made the microfilm is by no means irrelevant. When, namely, the identity with the original (i.e. the true reproduction) is guaranteed by the vary character of the organization having made of the original, its technical facilities, professional knowledge, etc., in this case the film may be accepted in substitution of the original without separate check, authentication a.s.o; i.e. by a simpler procedure. When, however, the photo was made by no such organization, further check and authentication should be required. Incidentally, the court (or other authority) will decide according to the system of free evaluation of evidence, whether it accepts the microfilm to take the place of the original.

Thus the organizations making microfilms are interested in operating with the most perfect technological equipment and professional training. However, since an absolutely identical level of training and facilities cannot be achieved with the various organizations, the question arises whether the statutory rules should give a special emphasis to the more competent firm by ensuring a special treatment to the microfilm made by such an organization. This may be expressed even by the name of individual organizations. The ultimate object is that the technically perfect microfilm should be capable of substituting the original document not only as regards its maker or direct user (viz. filing, management of affairs), but on a general level as well.

This necessity has led to the safeguards capable of ensuring the legal effect of microfilms: these are summarized in the Chapter on the legal guarantees of microfilm-making.

1.1 It has not yet been quite evaluated, what inherent safeguards are necessary to determine: which organization (person) should be entitled to make such microfilm which, in itself, can replace at courts, State-administrative and other agencies, authorities and clients, the original document.

Since the admission of microfilms in lieu of the original is a recognized and general wish, the legal safeguards of microfilm-making can be further enhanced if the statutory rules of the given State appoint certain organizations (persons) which (who), basing on this statute, by their office, authority, competence or jurisdiction are entitled to making microfilms, and such microfilms should be generally accepted to replace the original, on the strength of the provisions of the said statutory rule. An exception should be made from the mandatory acceptance when (a) the respective rules have not been observed in making the microfilm, or (b) when the microfilm has not been made by the organization (person) entitled thereto.

This solution is similar to the one, generally known, when a statutory rule empowers certain organizations (persons) to make authenticated copies of documents and decrees that the latter should be accepted in lieu of the original (cf. the power of notaries public).

1.2 The above essentially refers to the first microfilm made of the original (camera-negative, master-negative). This is where the requirement comes into the limelight that the microfilm should correspond to the original in every way, that it be technically perfect and that it be able to replace, to substitute the original.

There is a further requirement, viz. that the photo made of the original should be directly legible, without the use of a reading or enlarging apparatus, in a way not necessitating a separate equipment: in other words that further copies, and particularly enlargements can be made from the original microfilm. Such copies and enlargements are used in courts and with other authorities. For this reason it is warranted that these further copies and enlargements, too, should only be made - or authenticated - by organizations (persons) entitled thereto, whereby the perfect, true and well-legible copies (enlargements) can be guaranteed.

2. As regards the appointment of the organization (person) the following variants are possible:

2.1 There is no organization (person) specially defined by statutory rules for making microfilms.

This solution would mean that anyone may make microfilms (including copies and enlargements). Thus, there is bi special authority, organization or person who exclusive power - or otherwise - to this purpose.

By this solution the court, authority or other agency is neither empowered nor obliged to admit such microfilm instead of the original or even to take microfilms into consideration in their proceedings. This solution - inasmuch as it relates to evidence - relies on the principle of the free evaluation of evidence. The court, authority or other agency will have freedom in assessing whether to permit the submission of microfilm in evidence at all; and when it is admitted, how it will be evaluated, further whether the presentation of the original document will be required.

2.2 In the next solution the statutory rules will appoint one or more organizations (persons) for making microfilms, not excluding however, that others may also make microfilms.

In this solution any organization may prepare microfilm of its own files (own documents, incoming documents, or those in its keeping) but it may also entrust others with making such microfilms. In addition, not only the said organization but also other organizations (persons) may engage in making microfilms (including copies and enlargements).

Accordingly, in this case, the possibility of using the microfilm will not depend on the person having made the photo, but on whether the rules prescribed by the statutes have been observed in making the film, whether its identity with the original can be checked, etc. Courts and other authorities will, essentially in the framework of free evidence, take a decision whether to admit the microfilm in their proceedings or not.

2.3 The statutory rule of a State may appoint an organization (person) for making microfilms and the microfilm thus made will enjoy preferential treatment. None the less, the State will not preclude others (organizations, persons) from making microfilm. The latter, however, will not be entitled to preferential treatment.

In this solution the organization appointed by statutory rule will have the benefit that each court, authority and all the clients are bound to accept the microfilm made by it in lieu of the original. No such obligation to accept exists in respect of microfilms made by others; courts will take cognizance of the latter on the basis of free assessment of evidence; as regards the private parties, it will be entirely up to them to accept or not to accept microfilms as replacing the original, in their private dealings.

The system of free evidence is not affected by the variant which decrees the mandatory admission of the microfilm made by the organization (person) appointed thereto in court proceedings. Even with this solution, the court, or the opposing party, may dispute the legal validity of the microfilm. Nevertheless, the microfilm made by the appointed person will enjoy a more advantageous treatment in two ways: on the one hand the onus of proof will be reversed (the opposing party will have to prove that the microfilm submitted by the other party is not identical with the original document); on the other hand, the party submitting the microfilm will merely have to prove that the rules relating to the making of microfilm have been observed and that the maker was an organization entitled thereto. Thus, in this case, the original will not have to be introduced.

2.4 The microfilm can be made exclusively by the organization (person) empowered thereto by statutory rule; such microfilm will enjoy preferential treatment. The statutory regulation will deny other organizations (persons) the right to make microfilm.

In this solution the legal effects are similar to those outlined in 2.3 above. The microfilm made by the appointed organization (person) must be accepted with general validity; however, it can be pleaded that the rules relating to its making have not been observed and thus the microfilm lacks the legal validity of the original.

Further, it may be pleaded that the microfilm was not made by the organization empowered thereto, and therefore it lacks the said legal validity. In this case the microfilm will be judged in the framework of free evidence. It will depend on the court (agency) or on the negotiating private parties whether - and how far - to adopt it instead of the original.

3. The organization (person) appointed for making microfilm may be:

a State organization (agency), or else a person given special rights, special qualification or trust, etc. by the State;

any other organization (person); in both cases the shots made by them will enjoy preferential treatment.

The following solutions are possible:

3.1 That organization shall be empowered to make microfilm which, by its functions is entitled to the keeping, storage of the document,

Such an organization responsible for keeping documents is the notary public in respect of the documents, instruments deposited with him (e.g. will, contract, declaration, attestation, etc.). The State archives (or private archives recognized by the State) are another type of such organizations. The archives will keep the documents either on the strength of statutory rules (viz. the historical, artistic, scientific, economic documents entrusted by the State to archival safekeeping) or else by special appointment (e.g. on the base of trust agreement).

The statutory rule will in this case determine the conditions under which the organizations, keepers of the document, are entitled to make microfilm (e.g. without the infringement of personality rights).

3.2 In each case the organization having made the document (originating organization) shall be entitled to make microfilm.

This may be a State, or another organization - even a private person, inasmuch as it is his (its) own document: the microfilm can be taken in every case from the original. Microfilming may become necessary for the inside purpose of office management or for outside use (utilization with other organizations, persons).

3.3 The organization to which the document has been submitted in the course of its regular functions, shall be entitled to make microfilms.

This may be a State or other organization, or else a private person.

In this respect the basic document - from which the microfilm is taken - may be the original document (document addressed to the organization or submitted to it), or else the simple or authenticated copy thereof (e.g. document sent by way of information).

4. The solutions adopted in the various States differ. Most States speak of microfilms without limitation, i.e. without defining the organizations empowered to make microfilm. Only infrequently is the solution used in which the recognition of the legal validity of microfilm made by a certain, specially appointed organ offers more safeguards than if anybody were entitled to make it. This is concomitant with the fact that the recognition of the legal validity of microfilm is still in course of development; most legal systems deal with the problem in the framework of free evidence. In the various States the following solutions can be found:

4.1 No special organization (person) is appointed to make microfilms, or else no provisions are in force concerning the preferential treatment of microfilms made by certain organizations (persons): Canada, Czechoslovakia, France, India, Sweden, United Kingdom, U.S.A.

4.2 The statutory rules (or intrinsic regulations) do define certain organizations (persons) but in addition to these, others are also entitled to make microfilms; however, the latter do not enjoy preferential treatment: Brazil, Bulgaria, El Salvador, Denmark, Federal Republic of Germany, Finland, Italy, Spain, Soviet Union, Yugoslavia.

There are differences, however, as to the organization so appointed: for instance in Brazil, it is the archive as keeper of documents; in Bulgaria it is the authority where the microfilming has been introduced, in Denmark the organizations (persons) bound to keep accounts; in El Salvador the merchants; in the Federal Republic of Germany the organs of trade and social security as well as some self-administrating public organizations (like universities, churches, etc.); in Finland, Italy, Spain, Soviet Union and Yugoslavia that organization where the documents are found functionally.

4.3 The statutory rule defines a certain organization (person) but other organizations (persons) are not excluded from the possibility of making microfilm. Still, the microfilm made by an empowered organization (person) enjoys preferential treatment. This is the method followed in Argentina, Belgium, the German Democratic Republic, Hungary, Romania.

In Argentina these are specially-defined organizations, keepers of documents: (the army, the general command of air force, the National Bank); in Belgium these are the Pensioners' Superannuation Fund, and the Post-Cheque Office; in the German Democratic Republic the State organizations, institutions and enterprises; in Hungary the public notary, courts and other authorities, or the archive (or other agency engaged in keeping documents): either those having issued the document, or the keepers thereof. In Hungary still other State, social and co-operative organs are entitled to make such microfilms which can replace the original made by them.

4.4 That a method, whereby the microfilm can exclusively be made by the organization empowered thereto by statutes and no one else, has not been found in any of the legal materials submitted to us.

VI. The Legal Safeguards of Microfilm-Making

1. The title of this Chapter suggests a more limited content; however, it deals with a larger aspect, since it is not restricted to the legal guarantees of the making of microfilm but also embraces the legal regulations safeguarding the keeping and storage of microfilm. There is no doubt that the legal regulation should cover - in addition to the preparation of the microfilm meant to replace the original document - also the keeping and storage. In the previous Chapter we were seeking answers to the question, who and which organs should be entitled to make microfilm as well as copies and enlargements thereof; whilst in the present Chapter we will inquire into the question, how, under which legal regulations, should the microfilm - or copies, enlargements thereof - be made and subsequently kept and stored.

2. Before presenting the actual rules valid in the various countries relating to the preparation, keeping and storage of microfilms, first we must establish in general the requirements set for the use of microfilms in the realm of law. In other words we should define the pretensions, claims, to which the microfilm should correspond in the relations of law. Obviously, the legal rules providing for the making, keeping and storage of microfilms must be in the service of these requirements and pretensions.

These requirements mean that the microfilm must be identical in every respect with the original and must reflect the contents of the original document in a precise and true manner. With regard to microfilming the following requirements have to be taken into consideration:

2.1 completeness, viz. that all parts of the document must be shown on the microfilm;

2.2 continuity, this can be ensured when the coherent (contiguous) documents follow one-another on the microfilm (reel or microfiche); further: at the beginning and at the end of the microfilm there should be indicated the name and address of the organization having produced them, as well as of the one where the document is kept, beside any other data that may be necessary for the identification of the original document;

2.3 control;

2.4 the registration of the microfilms in a manner satisfying the needs.

The above requirements have been expressed - partly or wholly - in the statutory regulations of the individual States.

In Argentina, Law. No. 18.559, passed on 28 January 1970 (promulgated in the Official Gazette 11 February 1970) introduced microfilming in the General Command of the Army, in respect of all kinds of documents and instruments. Section 3 of this Act contains the provision that the microfilm must be in any case the full and true copy of the original document or instrument. It is prohibited to effect on the original documents any kind of clipping, folding or correction, as well as any deliberate action aimed at the complete or partial omission, amendment or modification of the data contained in the original document or instrument. The perpetrators of such acts (thus goes on the provision of Section 3 of the Law), depending on whether they are civil or military persons, will commit the crimes infringing Sections 292-294 of the Penal Code or Sections 855 and 856 of the Military Penal

Code, respectively, and shall be punished accordingly. According to this regulation, the falsification of microfilm is deemed equivalent - as regards the penal sanctions - with the commission of falsification of documents.

According to Law No. 18923, passed on 19 January 1971 (promulgated in the Official Gazette on 5 February 1971), Section 1, on the introduction of microfilming at the General Command of the Argentine Air Force, the same rule applies to the persons serving in the air force.

German Democratic Republic. The Guidelines approved by the Council of Ministers of the GDR on 18 September 1972, concerning the microfilming of documents and designs, contain provisions as to the following requirements: the microfilm must be:

absolutely legible,

completely contiguous,

true to the original,

provided with registration symbols and indicating the contents of the microfilmed documentary matter and designs.

3. The legal safeguards satisfying the requirements set against the microfilm are attaching (for the time being having in mind the preparation of microfilm) to the individual steps, stages of microfilm-making. Thus, the question arises, what are the principal moments or stages in the process of microfilm-making from the aspect of the construction of legal safeguards - at this point disregarding the continually developing technical and technological processes and their individual phases. Perhaps we do not err if we divide the process of microfilm-making into four, clearly-demarcable stages, viz.:

3.1 preparation,

3.2 making of the microfilm proper,

3.3 checking of the microfilm thus made, and

3.4 registration of the checked microfilm.

(Checking and registration do not necessarily follow in two separate stages: they may be carried out simultaneously.) This fourfold division of the legal guarantees seems a useful one, regardless of the fact that also in this domain the techniques are continually improving and that the current processes of microfilm-making are not at all exclusive.

ad 3.1 As regards the preparation of the original documents to be microfilmed, none of the laws of the States with which we acquainted ourselves, contain detailed provisions. However, the cited Guidelines approved by the Council of Ministers of the German Democratic Republic contain the provisions, that the microfilming of the documentary and design matter cannot be carried out until the order, security and secrecy are ensured.

(As to the rules to be codified in this respect, we shall revert to them in Chapter IX containing the Recommendations.)

ad 3.2 The photo must be taken in such a way that in the microfilm - whether it is a microfilm-reel or microfiche - all annotations, corrections, cancellations and additions contained in the original document should be clearly recognizable, without any difficulty.

There exists regulation for the case when the contents of the original document are continued on the backside, which must be indicated in such a manner that the correlation should be apparent. There are also rules providing that the ruptures must be recognizable in the microfilm. (German Federal Republic).

3.21 The stage of microfilm-making will involve the following two questions:

3.211 Is there a possibility for the owner (possessor) of the original document to be present at the making - or developing - of the microfilm?

3.212 What is to become of the microfilm when, after its completion, the original document is subsequently changed, something is added or cancelled; a special problem: whether the subsequent addition, cancellation or else correction of the original text has been carried out lawfully or unlawfully?

ad 3.211 In the Argentinian regulation (Law No. 18.569, Section 5) there is a possibility that, upon request, there should participate in the microfilming process those persons who declared or recognized rights or future interests are affected by the original document or instrument. If such persons, despite due notice, fail to appear, they are barred from further exception against the microfilming procedure.

There are, however, cases, when the practical execution of this possibility meets with difficulties, or is outright impossible. Let us remind e.g. of the large number of microfilms made in connexion of the various banking transactions. It is not possible to summon to the banks (as is pointed out in the Draft Bill No. 19.931 on the permission of microfilming for the Argentine National Bank) all the signatories of the thousands of cheques incoming in the Bank every day, the savings depositors etc. A previous summons would be impracticable, mainly for the urgency and speed required in banking operations, further because the identification with the original has to be performed within the shortest time.

ad 3.212 In the Federal Republic of Germany there are rules for the case when the original document is subsequently modified or completed (after the making of the microfilm). In such a case, the authors of such annotations must be identified with proper signatures or in some other way and this must be shown in the original document. Of the original document thus modified or completed new microfilm shots must be taken (under the observance of the legal safeguards); in other words this is not equal to supplementing the earlier microfilm. In this solution, another regulation can be imagined: viz. that in the case of a subsequent completion of the original the authenticity of both the previous and of the subsequently-made microfilm will be

maintained - just relating to the various dates of time. (Example: microfilms made of the birth, marriage certificates; exception: wills.)

When the modification or completion of the original document has been made in an unlawful manner (e.g. by an unauthorized person, or under duress, fraud) and this is proven in the course of court proceedings, it need not affect the authenticity of the microfilm made prior to the change or completion.

If the microfilm is taken under the observance of the due and proper legal guarantees, in fact it will be much more difficult to tamper with a regularly prepared microfilm than with the paper documents.

ad 3.3 The ready microfilm should be tested first technically, secondly for its trueness to the original. Soon after developing the microfilm is checked for technical soundness. The findings of the check are recorded on the sheet instructing the making of microfilm, or elsewhere. Of course our attention is principally directed at the second type of check, albeit the technical check may also reveal irregularities having a legal relevancy (e.g. the microfilm has suffered a mechanical or chemical damage as a result of which it is incomplete or not quite legible). As we have seen, the statutory regulation of the various States is rather scarce as regards the first two stages of microfilming, i.e. the preparation and the making. This is less true of the stage of checking, where many more legal rules are encountered.

The Decree of the Minister of Economy and Finance of the Federal Republic of Germany contains a separate provision, whereby the owner of the firm or the person empowered by the latter is responsible for checking the careful making of the microfilm shots. According to the Guidelines, para. 4 attached to the Decree, the making of a microfilm should be recorded in a protocol containing the following data:

3.31 the type and extent of the microfilmed document,

3.32 the place and date of the microfilm-photo,

3.33 observations concerning the unchanged character and completeness of the documentation taken on microfilm.

The protocol containing the above data must be signed by the person (persons) having made the microfilm. The protocol (unless it is microfilmed) must be kept in original. The Guidelines do not mention that the protocol must be authenticated - although this would seem inevitable.

Also according to the Finnish regulations, the microfilming must be recorded in a protocol, in addition to which a diary must also be kept. The latter will show the technical data relating to the photographs, viz. the quality of the film, the emulsion index, the type of developer, fixative and other substances possibly used.

This raises the question whether the drafting of protocol is equivalent or merely similar to the registration. We are of the opinion that the latter is true.

In the statutes of Argentina (Law No. 18.569, Section 4), the microfilm is authenticated by the highest-ranking official of the microfilming group of the Army Supreme Command; the copies are authenticated by a public notary appointed to the Command for that purpose.

3.311 The necessity of checking the microfilm will arise not only in the process of microfilm-making but also during keeping and storage: this is the check effected at regular intervals.

In the United States of America, according to the valid law: Uniform Photographic Copies of Business and Public Record as Evidence Act (UPA), section 101-11.506-8, in approximately two-year intervals a certain per cent of microfilms (reels) selected at random, must be checked. At each two-year check another material must be sampled, while some overlapping is conceded in order to test whether a change has ensued in the samples tested earlier. The result of such checks must be reported to the National Archives, to the National Archival and Record Service, to the General Services Direction - within 30 days of the completion of the check. The report must contain - according to the said provision:

the amount of the microfilm copies of the permanent records, i.e. the number of reels or individual frames;

the number of checked microfilm copies;

the rate of the microfilms; and

the possibly needed changes.

In the Bulgarian People's Republic there is no general ruling for the uniform regulation of the microphotography of documents, for the use and preservation of microfilms. Nevertheless, the following practice has evolved. The handing over of the materials completed in the microfilm laboratories ensues after filling in an order form. The handover document must be signed by the head of the microfilm laboratory as well as - when the microphotography is carried out by a service enterprise created for this purpose - by the delegate of the customer or the person entrusted with the receipt. In this case, not the customer, but the service enterprise has the task of checking.

According to the Bulgarian practice, in order to promote the correct preservation of the microfilms, a committee will hold an inquiry at least each five years to ascertain whether the negatives and the positives are still to be found, and the technical condition of the negatives. In the course of this control every microfilm set (negative plus the attaching positives) are checked on the basis of the book of arrivals and the book of microfilm collections. The findings of the check are recorded in a protocol. If the check reveals any faults (damages), the respective microfilm negatives are immediately handed over to the microfilm laboratory for corrections. The unusable (unfit) positives must be replaced by new ones.

(We are of the opinion that it is not necessary to generalize the rules relating to the temporal, regular check of the microfilms. As it is, there are no general rules either for the regular check of the original documents preserved on paper or other materials, not even in tropical countries, where the possibility of damage to the original is even greater.)

ad 3.4 The retrieval of the microfilm made of an original document is best ensured when the register of the data relating to it is accurate.

The Argentinian regulation (Law No. 18.569, Section 6) merely states that in order to be accepted as full-value evidence, each microfilm must show the number of the reel or strip.

The German Democratic Republic and the Federal Republic of Germany do not provide a detailed regulation on the registration of microfilms.

According to the former, the organization of work the process of microphotography should be established in such a way that they ensure the reasonable exploitation of the microfilm-technique and the microfilms themselves; also the efficient storage of information, retrieval and use should be guaranteed. (The latter conditions, i.e. the reasonable exploitation, the efficient storage, retrieval and use, have no relevancy in law. Therefore the legal regulation need not cover them.) The Guidelines approved by the Council of Ministers of the German Democratic Republic make it mandatory that each produced microfilm and enlargement should be provided with registration symbols as well as with the indication of the contents of the filmed documents and designs. The respective rule of the Federal Republic of Germany merely states that the "visual carriers" (Bildträger) should be preserved with care and systematically which, of course, is equally true for the original documents.

In the Soviet Union a regulation has been issued, according to which the starting frames of each microfilm must be provided with a registration notice. This notice is first prepared on a common, thick, white paper in black China ink, or else printed with suitable types (e.g. bold-face); these are subsequently filmed in an eye-legible manner. The paper containing these notices are usually preserved together with the original or the negative copy.

The UPA in section 101-11.504-1, para. a. clause (2) states that the microfilm made of an original document shall be classified, identified and filed in such a manner that each separate document and all particulars of the original can be easily found.

In the same section para. b. clause (1) decrees that the first frame of each microfilm shall contain:

designation of the agency or organization to the original documents of which the copy relates,

the type of the original document,

the number of the microfilm reel,

security classification, if any (secret, highly secret, etc.), finally

where possible the dates, names and other data defining the first and the last document shown in the microfilm reel.

Such a practice has also evolved that the microfilm-reel gets automatically numbered during the picture-taking which facilitates retrieval and identification with the original.

In the above-quoted section: para. b, clause (2) lays down the principle that all serial numbers, file numbers or any other means likely to help the retrieval of the microfilm copy should be shown at the beginning of the copy. According to para. c. clause (2) the same provisions apply for individual microfilm copies.

In the practice of the Bulgarian People's Republic at the start and finish of each archival unit - both on the negative and on the positive - title inscriptions (prelims) are inserted. These inscriptions (prelims) have to show:

the code of the archival unit (name of the archive, number of the fund, number of register, number of archival unit),

name of the photo-laboratory having made the microfilm,

number of the order,

date of microfilming,

name of the person doing the microphotography.

These documents - according to the Bulgarian practice - are handed over in a systemated order, accompanied by a specification, technically complete (labelled, numbered, authenticated, underscored where necessary). In the inscription of the document all uncorrected faults (missing parts, completely white text parts, etc.) have to be indicated.

4. In the foregoing it has been mentioned that the legal regulation has to cover (in addition to the various stages of microfilm making) also the preservation and storage of microfilms. Various methods of safekeeping are known, depending on how long the keeping time need be.

The legal regulation has the aim to help protect the microfilm and microcopy from physical, chemical and biological damage.

The most detailed rules concerning the preservation and storage of microfilms are contained in the UPA (quoted above). Since the microfilm is more sensitive than the paper to air moisture and climatic conditions, a thorough care should be devoted to these impacts during storage. The more so, since the smallest injury to the microfilm may affect a large volume of information.

According to information received from the Ministry of Justice, Bulgarian People's Republic, those national organizations which have introduced the application of microfilm, have also installed the regulation of the air temperature and air moisture of the premises used for storage.

VII. The Connexion Between the Microfilm, the Copy and Enlargement made thereof as well as the Original Document

1. One of the main reasons for the widespread application of microfilm lies in the fact that it is able to render the true image of the original, it can be easily handled and its uses are manifold. This involves such advantages as the saving of space through the use of microfilm, the protection of the original documents, safe preservation, etc.

Owing to this, in the business life the practice has evolved that microfilms are accepted mutually, by common agreement, out of mutual trust, and the original is not requested. However, as soon as a dispute emerges and a fact has to be proven, the question will immediately arise: how far the microfilm can replace or substitute the original document (see the Chapter on evidence), and a secondary question: what shall be the fate of the original after its having been microfilmed. The latter question involves a further one: how can space-saving be achieved through microfilming when the original has to be preserved as if nothing had happened.

Also connected with the said factors are such further advantages inherent in microfilm, as the fast flow of information, easy availability of certain data (designs, plans, drawings, data contained in books, etc.). These advantages cannot be felt either if the microfilm is not allowed to replace the original.

2. In contrast to microfilm, the fate of the original will differ depending on the type of the document in question.

2.1 In the business life, in commercial transactions many kinds of documents - especially bookkeeping vouchers, notices, appeals and similar letters, delivery notes, waybills, etc. - become obsolete in a very short time, as soon as performance, payment, delivery, etc. have been effected. However, because of the statutory limitation prescribed by civil law these vouchers may be needed later; also because of fiscal cheques (tax, duty), these documents may be required after many years for the revision of the income, revenue and the whole bookkeeping. For this kind of document, if the purpose that the microfilm should replace the original, can be achieved, the original may be destroyed after the microfilm has been made.

2.2 The situation is different as to the documents of archival value. Every State collects, protects and preserves the documents important from a historical, artistic or economic viewpoint and decrees that they be kept in archives even when they are no longer needed in the normal course of business (the transaction has been closed, the statutory limitation has set in, etc.). The special value of such documents lies in their importance, their availability for research, their preservation in the original form - warranting their safe-keeping and unavailability for the general public. In this respect, too, the microfilm will offer a great help enabling, as it does, the study of the document, the fast and easy flow of the information contained in it, without having to remove the document from its safe-keeping place.

The microfilming facility induces the archives to study, too, whether the value of each document kept by them warrants its being preserved in the original form, or else, would it be possible to reduce their number and preserve some of them on microfilm only. In this case the original may be weeded (scrapped), like in 2.1.

2.3 The significance of the microfilm is further enhanced by the fact that when a document is needed by the very organization whence the document originates, it may resort to the microfilm made by itself or by the archives and give information on the basis of the latter. This circumstance warrants the requirement that the microfilm should replace the original even when the original is available.

A similar situation may arise in a reversed sense. E.g. the originator of the document has to keep the original for some reason (for instance certain interests require its being kept at the premises: the unity of a collection excludes the removal: library, trust, non-State collections, etc.); still, reasons of safety will prompt the making of microfilm copies. In such a case the microfilm copies should be issued both on the basis of the microfilm and on the basis of the original, and the copy (enlargement) made of microfilm should have identical legal validity with the copy made of the original.

3. The present paper has not set the task to study the question or to suggest proposals as to the types of documents recommended for microfilming for the sake of the above-said purposes. This must be decided by the given organization (document originators, keepers) under the aspects of expediency and economy. Our aim is to present the methods by which the original document can be replaced most directly by microfilm, and also the suggested fate of the original. The latter will, of course, influence the making of microfilm.

With consideration to the foregoing, the following possibilities exist in the relation of the microfilm and the original, including the copy and enlargement thereof:

3.1 The first microfilm (camera negative) possesses a validity identical with the original document.

This solution requires that each time a new first film (camera negative) must be made from the original by photography because the copy made of the first negative might not be of identical value with the original. Doubtlessly, this method offers increased safeguards, as it is every time the original which gets photographed. Thus, the defects arising from the multiple recopying (pollution, scratching, other injuries to the film) can be eliminated. There is, however, the drawback that the original document has to be kept at all times in readiness; thus it cannot be scrapped and its protection becomes more difficult.

3.2 The first microfilm and all further copies made therefrom (either positive or negative ones) have identical validity with the original.

This solution is economical, it helps to simplify the handling of files, it contributes to the fast flow of information and protects the original. It also has the practical advantage of eliminating the necessity of checking (which is very hard to check) whether we are dealing in the actual case with the first negative or a copy of the latter; such a check would be inevitable in the solution described under 3.1.

There is a drawback that the copying and recopying induce a deterioration of the quality, also affecting the legibility.

3.3 Not only the first negative and the copies made therefrom or from its copies possess identical value with the original, but also the enlargements made from the microfilm or from its copy do so.

This solution is the direct consequence of 3.2. When, namely, we permit copies to be made from the first microfilm negative, then it is warranted to permit the making of enlargements (paper prints, etc.) made from it, of a size enabling direct legibility (without the use of enlarging or reading apparatus). This has significance in proceeding before courts or other authorities where mostly such instruments are employed which lend themselves for direct study. The microfilm, in itself, is no such instrument but the enlargement made thereof is, and the latter can also be authenticated in the traditional manner (attestation clause, seal, signature).

4. The relation between the microfilm and the original has also a bearing as regards the fate of the latter subsequent to being microfilmed. In this respect the following solutions can be imagined:

4.1 After the completion of the microfilm the original document may be weeded (scrapped, destroyed).

With this method the aim of space-saving can be directly achieved. Storage becomes simpler both as to space and in volume (weight). It also enables safe preservation and easy retrieval of the data.

However it should be kept in mind that the preparation of microfilm freezes a given moment. If, therefore, the original is modified following the making of microfilm, before the original is destroyed, the new, modified form must again be microfilmed indicating the new date of the photo. In this case both microfilms are valid but they will reflect the original at different times. It may be that the original is not destroyed at all but is continued with further entries (e.g. marriage, birth register). In the latter case it is particularly important that the date of the making of microfilm could be clearly established.

4.2 After being microfilmed the original cannot be immediately destroyed (weeded), but only after the lapse of a certain time.

This solution relies on the concept that the microfilm is unable to replace the original in every respect: the corrections, cancellations - even falsifications - cannot be established from the microfilm. Thus, in the interest of finances or justice (criminal prosecution) the further preservation of the original might be warranted. When the keeping period is identical with the weeding period (the latter also considers the forfeiture of the claims) practically we have made no step forward as the storage of the original document will cause further difficulties. Still, even so, the microphotography offers the advantages of easy handling, availability, retrieval - i.e. enables faster, easier work and better office organization.

An intermediate solution is when the period of the preservation of the original is shorter than the scrapping period (e.g. instead of 5 years only 2). In this case it will have to be decided whether - in the interest of the better work organization - the photography should be carried out immediately (i.e. at the birth of the document) or else only at the end of the above preservation period, i.e. the shorter period set in respect of the microfilm (in the above example: 2 years).

At this point it should be mentioned that the regular microfilming offers better safeguards in itself because the frames of the documents follow one another in a close sequence and cannot be lifted or exchanged.

4.3 The original has to be preserved even after making the microfilm.

4.31 The original cannot be destroyed because of its character. This is usually determined by the national law of the given State. In this category belong the various personal registers (birth, marriage, etc. registers, staff lists), basic records of bookkeeping, solemn acts of State (laws, treaties, originals of decisions, etc.) and similar scriptures. In such a case the microphoto will save the original and still make it available for scientific study and the like.

4.32 The safe preservation of the original - in cases not mentioned under 4.31 and 4.32 (e.g. construction designs, drawings, maps) - in order to issue copies, attested copies, attestations, etc. needed in the regular course of business. In such a case the organization will store the original at a safe place, while the microfilm is kept ready for everyday use: information is delivered from the microfilm.

5. The legal systems of the various States provide different answers to the problems outlined above.

5.1 On the strength of the available legal material it can be stated that the various legal systems in general do not make a difference between original microfilm (master) and the copy or enlargement made thereof. Speaking on their utilization, legal validity (see next Chapter), they usually treat them under identical considerations.

5.2 The situation is different as to the fate of the original after making the microfilm. Most States have not provided for this contingency, obviously because the substitution of the original by microfilm is still in the course of development. In the States where some provisions are in force, the solutions differ depending on the type of the document.

5.21 The most general solution seems to be that the original can be destroyed after the lapse of a certain time dating from the photo. In this respect two variants are encountered:

5.211 The condition of the destruction is only a certain period. This is the situation in Argentina (for some documents it is identical with the statutory limitation), in Brazil, Denmark, the Federal Republic of Germany (for certain types of documents), Finland, Italy.

5.212 In addition to the lapse of time, there is the further condition that the document should not be an irreplaceable one; in the German Democratic Republic; or else that the document should not be in trust (fiduciary deposit) or one whose destruction is forbidden by law: U.S.A.

5.22 Some statutory rules also decree immediate destruction after the making of microfilm. Thus, Argentina and Denmark for certain kinds of documents. The same situation prevails in the U.S.A. where, except for deposited and legally protected documents - the original can be destroyed after being microfilmed.

5.23 Whilst the legal systems generally recognize the preservation of documents possessing archival value, still the matter under scrutiny referred to the relations of such documents only at two places: the respective statutory rule of the German Democratic Republic prohibits the destruction of certain originals and drawings even after being microfilmed. Also, the rules of the U.S.A. prohibit the destruction of legally protected documents after the making of microfilm.

VIII. The Probative Force of Microfilm, of the Copy and Enlargement made thereof

In this Chapter we shall examine the significance that the various legal systems attach to microfilms, to the copies and enlargements made thereof as regards their probative force. In orther words: the paper will deal with the problem, to what degree the microfilm, its copy and enlargement can be admitted in evidence at courts and other authorities (e.g., in State administration procedure).

Before presenting the respective legal regulations of the various States - as far as they are known to us - in a certain classification, we must get acquainted with the contents of the relating legal conceptions. The meaning of evidence, means of evidence, probative force as well as the free evaluation of evidence (proof) must be defined.

1.1 Evidence covers the activities of the parties, other participants of the litigation (witnesses, experts, expert-witnesses, interpleading persons) as well as of the court (or other authority) the aim of which is to form the conviction of the court (other authority) about to take a decision as to the existence or non-existence of a fact.

The activities of evidence include: (1) the submission (presentation) of the means - pieces - of evidence to the court (authority), (2) the cognizance of proofs, i.e. the preparation of the taking of evidence, further the taking of evidence, (3) finally in establishing the probative force (conclusive force) of the means of evidence or the proofs.

1.2 The means of evidence include the persons or things through whom or through which the court (authority) will, by their observation, draw conclusions as to the fact to be proven. The means of evidence can be grouped under various headings. The most widespread classification demarcates the personal and material means of evidence. The types of the means of evidence are usually grouped as follows:

(a) the deposition of the parties,

(b) the deposition of the witnesses,

(c) expert opinion (permanent, appointed, ad hoc experts),

(d) documentary evidence (public document, private document),

(e) material evidence.

In the utilization of microfilm as means of evidence, there may be various views and theoretical standpoints as to whether the microfilm (its copy, enlargement) is a material evidence, or else a document; whether it has an independent nature under law. The microfilm (its copy, enlargement) stands nearest to the independent material evidence - provided that the legal safeguards have been observed.

1.3 The probative force can be defined as the significance that the court (other authority) attaches to the given means of evidence in respect of the fact to be proven.

1.4 The systems of evidence show two basic types: the formal and the free type. In the first system the formal rules of evidence limit the powers of the judge (functionary of an authority) in the assessment of the means of evidence; in other words the rules prescribe for the judge (functionary) the admissible means of evidence and the relative force of each such means. In the second the judge (functionary) is given freedom to decide according to its own conviction, in searching for the truth. The essential feature of the free system of evidence, is, therefore, that any means are admitted as evidence and there is no distinction as to those having full (conclusive) or incomplete probative force. Exemptions from this rule are the so-called presumptions of law, and other statutory rules according to which certain circumstances have to be regarded as fact until the opposite is proven, or else when the validity of a legal transaction is made dependent on a document (deed), possibly public deed, and such transaction cannot be proven otherwise.

2. After getting acquainted - approximately - with these few legal concepts, we now may proceed to the proper subject-matter of this Chapter, which is: what degree of probative force is recognized by the various legal systems for the microfilms (including hereinafter also the copies and enlargements) as independent, material evidence; under what conditions and in what a range do they permit the use of microfilm in court (and other authority) proceedings as means of evidence.

(We now refer to Chapter III in which we indicated that the legal systems fall under three groups, in this respect. We are now presenting the detailed rules in this threefold grouping.)

2.1 We may state that none of the laws of the States with which we got acquainted, contains an express prohibition as to the use of microfilm in evidence.

2.2 The next imaginable legal solution is when the procedural law of the given State takes the free evidence system as a basic principle and fails to provide for the admission of microfilm as evidence in the proceedings of courts (other authorities), from which there follows that the given legal system does not want to exclude the microfilm from among the means of evidence: therefore it will belong to the free deliberation of the proceeding authority to determine the drgree of the probative force of the microfilm intended to substitute an original document.

Finland follows the practice that the probative force of the microfilm is recognized, provided that the microphotography was done in a public archive under the observance of the procedural rules prescribed thereto.

In France the microfilm - and the copy made thereof - has the same probative force as the original.

In the People's Republic of Poland the ordinary courts and the social security courts assess the contents of the microfilm as an evidence. This practice relies on section 308 of the Polish Code of Civil Procedure according to which the court may admit in evidence films, photocopies, photographs, sketches, drawings as well as records, tapes and other sound or visual recordings.

In the Romanian Socialist Republic the judicial practice does not exclude - until the opposite is proven - the possibility of proof with the help of documents materializing in a photofilm record.

In Sweden the microfilm belongs to the category of freely assessable evidence (fri bevisföring). The court will accept the microfilm with great probability (the information received does not mention other authorities) if the microfilm has been made in accordance with the well-founded regulations of an authority, government agency, institution or private enterprise, and due care has been exercised.

In Sweden there is a general wish that the microfilms made of business accounts should have the same probative force as the original documents provided that the microfilm was made according to the mandatory rules approved by the competent authority.

2.3 The third - and largest - group includes these States where the law provides a regulation as to the mode in which the microfilm can replace the original as evidence in court (or other authority) proceedings. In principle, two ways of regulation are known: the legal system will either permit the evidence with the help of microfilm (naturally, subject to its having been made under proper legal safeguards) without any limitation, or else, the legal system may admit the evidence only within a certain framework, under certain conditions: i.e. in a limited range. The limitation can be effected from many sides. It is possible that the legal system will permit the use of microfilm in evidence for determined subjects-at-law only, and in case of certain types of instruments or documents, further it will not permit for some organizations (court, agency).

The limitation may ensue also in such a manner that the law prescribes for the courts (authorities) to consider the evidence with the help of microfilm not as primary and direct evidence but only as:

secondary,

indirect,

supplementary evidence.

In the following we shall acquaint the reader with the relating legal rules of the various States - as far as they are available - in the above general classification.

2.31 In England the Civil Evidence Act of 1968, in section 10, para. (1), clause (d) states that "document" includes, in addition to a document in writing - any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom. The term "film" includes a microfilm. In the said Act, section 10, para. (2), clause (b), rules that a copy of a document includes a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not.

Similar provisions apply in Scotland /cf. the Law Reform (Miscellaneous Provisions), (Scotland) Act 1968, section 17, para. (3), clause (d)/. The Scottish provisions also rule - in section 17, para. (6) of the said Act that nothing in this Act shall prejudice the operation of any (different) agreement between the parties to any proceedings as to the evidence which is to be admissible.

According to the Canadian statutory provisions the "copy" shall include - in respect of any document - the photocopy whether enlarged or not; "Photographic film" includes the photographic plates, the microphoto film as well as the negative of the photocopy. The same legal source contains the provision that the term "court" shall include a law-court, judge, umpire (arbitrator) or any person before whom a legal dispute is heard; "legal proceedings" shall mean civil proceedings or criminal proceedings in the course of which evidence is or may be procurred and also includes arbitration proceedings.

In the said three States the microfilm can be used in court proceedings (in the wider sense) as complete evidence without any limitation, regardless of the document from which the microfilm was made.

Neither is there in these three countries any limitation as to the subject-at-law who may use the microfilm as means of evidence.

2.32 The statutory provisions of most countries usually set certain limitations as to the admissibility in evidence of the microfilm in court (authority) proceedings. Such limitations may contain restrictions from several sides. The most frequent limitation is that the court (other authority) will admit microfilms made of actually defined types of documents in evidence. This restriction is not merely an objective one but also may be personal inasmuch as it gives this privilege to a certain range of subjects-at-law, more precisely to persons practising certain professions.

The probative force of the microfilms and photocopies made at the Supreme Command of the Argentine Army (the Office of the Adjutant-General, Central Headquarters) has the same probative value as that of the original provided that the provisions of the Law and its Implementing Decree have been rigorously observed (cf. Law 18.596, Section 2). Law 18.923 vests the microfilms and copies made at the Supreme Command of the Air Force with the same probative value. Identical rules apply to the microfilms and copies made by the Argentine National Bank (cf. Law, 19.931, Section 2). The originals of the Bank's own files and documents inasmuch as third persons have not participated in their creation and handling, lose their legal validity as soon as they are microfilmed, which in fact transcends to the microfilm or its copy. The Bank has the right to destroy the said originals. There is no rule to that effect but it is obvious that the original documents not destroyed by the Bank will not lose their probative force.

Documents signed by third persons, or else original documents and instruments, in the creation or handling in the course of business also third persons have participated, which have to be preserved, will retain their probative force even after being microfilmed under the legally stated safeguards - irrespective of the probative force of the microfilm and its copies.

As regards the instruments and documents possessed by third persons which the clients or other banks send to the Bank temporarily, with the request of carrying out some instruction - the microfilms and copies made of such instruments and documents may serve as a proper evidence proving the existence of the original, the contents of the latter as well as the measures taken in connexion with them by the Bank, even after the latter is stolen or lost (cf. Law No. 19.931, Sections 5-7).

In Belgium the probative force of the microfilms is admitted into two cases only: for the Postal Cheque Account Office and the General Savings and Superannuation Institute.

In Brazil according to the Decree of 21 November 1968 on the national archives: the public and private deeds (documents) kept in archives may be microfilmed, in which case the microfilms made according to the cited decree - including authenticated copies, transcriptions and photos (photocopies) made thereof have the same effect as the original; the original documents can be destroyed.

In the Federal Republic of Germany the incoming business letters, the copies of outgoing letters, the bookkeeping vouchers and - as far as they are relevant for taxation purposes - the commercial records and other documents may be preserved, in order to fulfil the legal prescriptions, in the form of microfilm. The same applies to bookkeeping vouchers which are to be kept during 10 years; these too, including the records made in books and accounts, can be substituted by microfilm (as regards probative force) (cf. the Decree of 22 November 1971 of the Federal Minister of Economy and Finance, No. F/IV. B 7-S 1160 c-5/71).

In the German Democratic Republic the microfilm made of the documents and drawings of the State and economic management organs, according to the cited Guidelines, must be regarded as identical with the original documentation (cf. "Guidelines", clauses 1.1 and 4.1).

According to the Hungarian Code of Civil Procedure /see uniform text, Act III of 1952, section 195 - amended by Law-Decree No. 25 of 1972, section 30, para. (2)/ the photo or film copy made of a public deed (document) or the photocopy made therefrom shall have identical probative force with the original document, provided the photo (film, photocopy) and the document were made by a court, public notary or other

authority and that the said institution is keeping either of them; or else: when the document is in the keeping of the organization otherwise entrusted for such jobs (e.g. archive), and the photo (film, photocopy) was either made by the originator of the document or the organization called for its safe-keeping. The same probative force attaches to the office copy (estreat) delivered by the organization establishing the public deed or by the one called to keep it. The Hungarian Code of Civil Procedure, section 196, para. (2) - as amended by section 31 of Law-Decree No. 20 of 1972 - prescribes that the probative force of a photo-(film) copy or photostat copy taken from a document made - or kept - by a socialist organization shall be identical with the one of the original document. When the copy has been made of a public deed, it shall be equal to a fully conclusive private deed, provided that the socialist organization which has delivered the document, has kept it or is keeping it, and has attested the identity of the document in a regular manner. (Section 396 of the Code defines the concept of socialist organization. Accordingly, in the implementation of the present Act, socialist organizations are: the State, the State-owned economic units, the State budget organizations, the co-operatives, the federation of co-operatives, the co-operative economic unit, the water conservancy association, the social organizations and enterprises thereof as well as the associations of economic units.)

According to the Italian law the public offices and private persons have the possibility to substitute the documents of their own archives, bookkeeping scriptures, correspondence, other documents which must be preserved under the laws and decrees for any purpose whatsoever (viz. also for evidence) by proper photocopies or even negative photos. For the public offices the process of copying is regulated by the decree of the Minister of Interior. Such a decree must be issued after consulting the Committee organized under the joint decree of the Ministers of Justice and Finance as well as the President of the Republic, No. 1409 of 30 September 1963, section 12 (cf. section 25 of Act 15 promulgated 4 January 1968 on "the regulation of the attestations and the authentication and genuineness of signatures in public administration".

In El Salvador, the microfilm negatives made of the merchants' books, lists and documents - under the preliminary permit of the supervising organ of State - have the same probative force as the original document. The same situation prevails when the merchant, owing to a statutory rule, does not preserve the original document, e.g. when the banks return the paid-up cheques to the account owners. The said rule is found in section 455 of the Merchant Law (promulgated in No. 140, 31 July 1970 of the Official Gazette).

In the United States of America the admission in evidence of the microfilm relies on three possible legal bases:

federal law (UPA) or special enactments of the States,

common law where the rules of "best evidence" or "original document" may by applied,

the business records exception to the hearsay rule.

The substantive provisions on admissibility of copies are contained in section 1 of UPA as follows:

"If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation, or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction when satisfactorily identified, is as admissible in evidence, as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original."

It is perhaps necessary to remind that the cited rule's application is limited to the use - admission in evidence - of the photocopies made of business documents and public documents provided these were made according to the prescriptions.

In Yugoslavia the admission of microfilm as means of evidence has been legally regulated in the framework of the social security and superannuation services.

2.33 The legal system may also restrict the use of microfilm as evidence also in such a manner that it lends it, right from the outset, a lower-grade proof value; the very statutory rule may lower the credibility of the microfilm when admitting it only as a secondary, indirect, or supplementary evidence. Thus, the restriction here is neither of a subjective nor of objective character but results in that evidence with the aid of microfilm does not qualify for a full-value proof.

This type of limitation was chosen by the Indian and the Spanish laws.

In India, under section 63 (2) of the Indian Evidence Act 1972, copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, will be included in the secondary evidence. A photo made from the original will qualify a secondary evidence in respect of its content. Otherwise, in India there is no statutory disposition governing the question of the legal validity of microfilm as evidence.

In Spain there is a legal regulation according to which those documents kept in the national archives which serve for the attestation of descent, including photocopies or photo-reproductions made therefrom, may be accepted by the Ministry of Justice in proceedings aimed at the attestation of nobility. Further, if such documents were properly certified by the archival offices, they may be employed as supplementary evidence in probate (succession) lawsuits as well.

3. In Denmark the statutes on the obligation of keeping accounts, notably according to the revised text of section 6 (8) of Law No. 178 (5 June 1959) as amended by Law No. 65 (12 February 1973): inasmuch as an authority has the right to request communication on the accounts of an institution and if the original voucher has been destroyed, the apparatus necessary for reading the microfilm voucher shall be put at the disposal of the authorities and the copies of such vouchers shall be delivered to the authority, free of charge.

IX. Recommendations

A. Introduction

Purpose and character of recommendations

1. On the strength of the study of the statutory rules as well as practice of various countries the experience has been gathered that with the expanding use of the microfilm, there is an increasing demand for the regulation of the legal validity of microfilm record in the sense that it can replace the original in every respect. The following recommendations are a summary of those measures which have been already taken in the individual States, in recognition of the legal validity of microfilms. Since, however, such measures are not general, not all-embracing and not even uniform in all aspects, it was our aim that the States wanting to, or about to introduce further measures towards the legal validity of microfilms, should make a survey of the legal regulation as well as of the practice of other States. In addition, the present authors wished to make suggestions as to the uniform regulation of certain questions where the available material on legal regulation or practice failed to provide suitable solutions.

Thus, the purpose of the recommendations is to provide a starting point for legal regulation to countries where such regulation is not yet complete. The authors would consider it as an honour if these recommendations helped to suggest ideas for an undertaking which would regulate internationally, possibly in a multilateral convention, the legal recognition and validity of microfilms.

Definitions used in the recommendations

2.1 "Microfilm" may be defined either as a transparent flexible material for the photographic reproduction of documents in reduced size or as a series of photographic reproductions on this medium that must be viewed optically and that may be used for additional microfilm copies or enlarged to make eye-legible prints.

The term "microfilm" is used in these recommendations always as the reproduction of an original document.

2.2 "Copy" shall mean any further microfilm copy - either positive or negative - made from a first generation microfilm (i.e. master, camera or original negative) or of the copy thereof.

2.3 "Enlargement" (enlarged print) shall mean a non-transparent print made from the microfilm on paper or any other material which is directly legible by the eye.

2.4 "Original" shall denote a writing, drawing, sketch, document, collection of related documents (file), picture, map, book, etc. - irrespective of its material (paper, plastics, glass, leather, textile, parchment, etc.), or of the signs found on it (letters, numbers, figures, pictures or other symbols a.s.o.) from which the microfilm has been made. It is immaterial whether the microfilmed original has been a primary (original) document or a copy, printed matter, reproduced writing, etc. Accordingly a difference should be made between the original and the first negative which means the first microfilm. The "original" (in itself, without an adjective) denotes that document from which the microfilm is made. The present paper does not deal with a microfilm behind which there was no original (e.g. the so-called computer output microfilm displaying the results obtained by a computer).

2.5 A set of documents is called "contiguous" when its individual parts form a continuous whole (e.g. the file of a lawsuit, viz. continuous material), or else when, due to their topic, contents or other reasons, they form a comprehensive whole as regards record filing or archival handling.

B. Recommendations for a legal regulation

General rules of making microfilm
Basic requirements

1. In preparing the microfilm - regardless of the original to be microfilmed, further irrespective of the type or form of the film - certain fundamental requirements must be kept in mind:

1.1 The microfilm must be the true copy of the original, it shall reflect the former in every respect: the microfilm must show all possible cancellations, corrections, annotations, etc. just like the original.

1.11 Completeness must be ensured: every detail of the original must show on the microfilm.

1.12 The microfilm must be well legible so that on its basis the original can be known just as if the original were under direct scrutiny.

1.2 On the microfilm single frames must follow one another continuously, in the same sequence as the pages, drawings, figures, annexes, files, records, etc. follow each other in the original.

1.3 The microfilm must enable the checking, viz. the identification with the original and this fact should be evident from the microfilm itself (inscriptions, identification signs, serial numbers, etc.).

1.4 When a set of documents cannot be filmed on a single reel of microfilm (or microfiche) the unity of the set of documents must be ensured in such a way that the coherence, the sequence and the continuity should be clearly recognizable.

Selection of the film material

2. That film material (black and white) should be chosen which is most suited for microfilming. When, in the original, the colours have a significance, that solution should be selected - out of several - which seems most suitable in the given case. Such solutions may be:

further keeping of the original even after it has been microfilmed,

in case of a short annotation in colour this fact to be mentioned in the register of microfilms,

preparation of colour microfilm (as far as practicable).

3. In the selection of the form of microfilm (reel, strip, microfiche), in the interest of expediency, the character of the original to be microfilmed should be taken into consideration.

3.1 The use of continuous film material (reel, strip) is recommended whenever the documentary material is contiguous, so that one film should include the complete material and its unity should not be disrupted by insertions, supplants.

3.2 The use of microfiche is recommended when the material is non-contiguous or it is contiguous but of smaller extent so that on the microfiche (depending on the latter's size) the microphotos of one or more originals can be placed.

3.3 A combination of the two former forms (3.1 and 3.2) can be achieved enclosing the film strips into jackets and by recopying the entire jacket onto a microfiche. With suitable guarantees this methods may be suitable for keeping contiguous materials.

3.4 Aperture cards can be used advantageously where the information (a document, drawing, design, etc.) can be included in one microfilm (i.e. the corresponding part of the reel or strip) which in turn can be inserted in a punched card, provided that the use of punched cards is warranted by the necessity of speedy registration (retrieval).

The material of the enlargements

4. For the sake of enlargements any of the usual photographic processes may be employed. Its importance lies in the direct use (without the help of reading mechanisms), which is particularly significant in proceedings in court and with other authorities (it can be submitted as a document, annexed to the records, files, etc.).

Ensuring the identity of the microfilm with the original

5. At the beginning of the microfilm (reel, fiche) there shall be denoted the data which enable to define the original which has been microfilmed. Whenever a reel or fiche contains several contiguous materials, the identification data should be denoted at the beginning of each new material.

5.1 At the beginning of the microfilm there shall be marked:

the organization making the microfilm, as well as the place and date of its preparation,

the name and address of the organization keeping the original,

the comprehensive, precise denomination of the original (designation of the organization from which the document originates, designation of the serial, title of the file, other identification symbols, other data helping the identification),

the original's character (original document, duplicate, copy, printed matter, reprographic product, etc.),

the material of the original (paper, parchment, textile, plastic a.s.o.),

the identification (registration) number or symbol of the microfilm.

5.2 On each microfilm frame, where possible, there should appear the serial number of the frame and the identification number (symbol) of the reel.

5.3 In case of continuously-taken frames, when there is a change in the photographed material (new file, new law-suit record, documents of a new year, etc.) the end of the former material must be denoted and at the start of the new material the identification data of the new original must be indicated.

5.4 On the closing frame of the microfilm the following must be indicated:

the name of the organization having prepared the microfilm (name of the person having taken the shots), the place and time of the making of microfilm,

the place where the original is kept,

when the contiguous material recorded on microfilm does not terminate with the end of the reel, the closing frame of the reel must show, where the continuation follows and the identification number of the latter.

5.5 The statements contained in 5.1 to 5.4 are valid for microfiches as well.

5.6 When a microfiche has been made by jacketing microfilm strips, the microfiche shall not be authentic (i.e. cannot replace the original) unless, beside it, the strips are also found on a contiguous whole reel (or several reels) made according to 5.1 to 5.4 above.

5.7 A proper place should be allotted on the microfilm (reel, strip, fiche) for the authentication.

5.8 When, by mistake, the microfilming of a page, an annex etc. has been omitted, or else the film has become torn, the replacement of the omission must be effected after filming the whole material so that it be obvious, which page, annex, etc. has been omitted. It is convenient to do this as follows:

at least two pages preceding the omitted (damaged) page, annex, etc., which have been photographed once, must be rephotographed; next the missing pages (annexes, etc.) must be photographed, and further at least two subsequent pages must be filmed which are already contained in the earlier microfilm; the material thus compiled should be placed at the end of the reel or on a new reel;

should the maker of the microfilm wish to insert the missing part in the earlier reel by splicing, the former rules must be observed with the proviso that: the first frame of the inserted part should show that the missing part would follow after the repetition of certain (indicated) frames - in order to replace missing frames of the earlier microfilm; next there follows the repetition of already available frames, finally, the subsequent part from the earlier microfilm;

in case of the rupture of the reel, the replacement of the destroyed part is effected according to the above rules.

Checking the microfilm

6. After the completion of the microfilm it must be checked for the following points:

whether the microfilm meets the technical requirements (is it legible, technically sound, good shot, etc.);

whether the rules guaranteeing the possibility of identification with the original have been observed (see 5 above).

6.1 If, as a result of the check the microfilm proves technically unsound, a new film must be made and the bad film must be invalidated (cancelled). When the microfilm is only partly unsound, or else when any of the data listed under 5 are missing, the faulty parts should be included in a new microfilm and attached to the old one in the manner described under 5.8, while missing parts must be replaced.

6.2 When as a result of the check the microfilm proves faultless, or else the faults have been remedied and the missing parts replaced, the microfilm shall be entered in the register, including the fact and outcome of the check.

Registration of the microfilm

7. Each microfilm must be registered. The register is an authenticated book (volume) consisting of bound pages and provided with pagination. The book shall be kept by the person making the microfilm. The authentication is done by the organ appointed thereto (e.g. public notary). The register contains all data that are necessary for establishing the identity of the original and the microfilm, further the check and the authentication. Accordingly, the following shall be entered in the register:

serial number (serial number of the register),

the data listed under 5.1 to 5.4 above (the ones that should also appear in the films),

the fact whether it is a camera or master negative or else a copy, whether it is a positive or negative one,

the data relating to the check and the authentication.

7.1 In the register each microfilm (reel, fiche) must be entered under a separate serial number.

Keeping, storage and maintenance of microfilm

8. The microfilm must be kept (stored) in such a way that it remain protected from physical, chemical and biological impacts.

8.1 The microfilm must be regularly controlled at its place of storage. If the control reveals any harmful effect, measures should be taken to eliminate it.

8.2 Whenever a microfilm is exposed to, or has already suffered, partial damage, it should be replaced where possible. In such cases it seems most expedient to make a copy from an available microfilm (kept elsewhere). Where this is not feasible, the original must be rephotographed. The new microfilm must be entered in the register, and the new one should be regarded as such replacing the original.

8.3 For the sake of safe-keeping possibly two or more microfilms should be made from the original. The microfilms should be stored separately from the original as well as from each other.

Replacement of the original by way of microfilm
Personal criteria

9. The definition of personal criteria provides an enhanced guaranty in ensuring the legal validity of the microfilm. The essential part is that a statutory rule should appoint the organization (person) which (who) will engage in a professional manner in the preparation of microfilms, and the State shall ensure in advance the acceptance of the microfilm in lieu of the original. Such an organization (person) may be:

the organ from which the document originates,

the organ destined to keep the document in its official capacity, no matter whether the document has been submitted or it is in the course of its functions (e.g. authority, law court, etc.) or else in its capacity of organ entrusted with the keeping of documents (archive, public notary, etc.),

the organ specially appointed for the purpose by statutory rule.

9.1 The designation of the organ empowered to make microfilms enjoying the said preferential treatment (viz. being recognized as identical with the original), will depend on the national (domestic) law of the State, and also depend on points of expediency.

9.2 While the statutory rules of a State may empower certain organizations (persons) to make such microfilms which enjoy preferential treatment in themselves (i.e. without special authentication) nevertheless this does not prevent others from also making microfilms not enjoying such preferential treatment. Such organizations may be:

the organ from which the document originates (as a rule for its own use, possibly also for its clients),

any organ fulfilling this task as a business undertaking (enterprise, co-operative, etc.).

Objective criteria

10. The objective criteria include the strict observance of the general requirements of microfilming, the possibility of control and of proof. These suppose the existence of completeness, continuity, trueness and legibility and the possibility of controlling all these on the basis of a precise register.

10.1 All these requirements are either fulfilled when, on the strength of a statutory rule, microfilms made by certain organizations are accepted per se in lieu of the original by the very fact of their having been made by the said organization (personal criterion); or else when according to the statutory rule the guarantee of the said criteria consists in the microfilm's being subjected to a separate act of authentication (objective criterion).

The authentication is not a condition of the making of microfilm but of its being able of replacing, in the given case, the original. Thus, while the microfilm may have been made by different organs or persons, they will have the same legal validity:

merely because they were made by a defined organ,

through authentication, irrespective of the maker of the microfilm.

10.2 Neither solution can affect the court's right to freely consider (admit) the evidence, however the more favourable consideration would ensue in both cases according to paragraph 12.

11. In addition to inside check, such guarantee is provided by the authentication of microfilms. The mode of authentication consists of inclusion in the film of suitable signs and a clause, and entering this fact in the register.

11.1 On the last - unexposed - frame of the microfilm a clause (number, name of the person authenticating the signature) shall appear in writing, in print (not photographing), possibly in relief print.

11.2 The clause may be photographed on the microfilm, accompanied by a separate authenticating document also containing the identification data of the microfilm.

11.3 Authentication may be effected on an authentication sheet (plastic, film, cardboard, etc.) showing the microfilm's identification data, mounted on the microfilm.

11.4 The authentication is effected on a separate verifying sheet only which is annexed to the microfilm book of register or to the complete film.

Legal criteria

12. The courts (and other authorities) admit the microfilm in evidence in the system of free evidence. This means that:

evidence by microfilm may also be admitted (any type and form),

the court (authority) may require in addition to the microfilm, also the deposition of an enlarged, legible print thereof,

the facts and circumstances proven by microfilm may be disproved according to the general rules of evidence.

12.1 Submission of the original instead of the microfilm shall be dispensed with, whenever the personal and objective criteria are given so that the microfilm can be recognized as the true copy of the original in every respect. The requirements thereto are:

the microfilm has been made by an organ (person) empowered thereto (preferred organ, person),

the microfilm has not been made by an organ empowered thereto, but it was objectively controlled and authenticated by the State organ (public notary) having the authority therefor.

12.2 The rules of evidence in respect of the microfilm submitted according to paragraph 12.1 should be established in the following way:

counter-evidence is admitted against the evidence presented by way of microfilm; however, presentation of microfilm in the manner set forth in paragraph 12.1 equals the evidence through the presentation of the original,

thus, the counter-evidence against a microfilm replacing the original is admitted inasmuch as it is admitted against the original (incorrectness of contents, faultiness, etc.); however, from the formal side, the objections against the original can only be brought forward against the microfilm on those grounds only which can be observed also from the microfilm itself (e.g. the handwriting does not originate from the same hand; the document lacks the necessary requisites, etc.),

the microfilm replacing the original - as a photograph - can only be challenged on the grounds that the rules of microfilming (i.e. the personal and objective criteria) have been disregarded; therefore the microfilm cannot be admitted, in which case the possibility for preferential treatment is lacking, which means that the said microfilm can be brought in evidence under the general rules of evidence; in this case presentation of the original can be required (if possible at all).

12.3 In case of any kind of microfilm there is the possibility that the parties will accept - among each other - as evidence a microfilm which does not correspond to the requirements of paragraph 12 but the parties have satisfied themselves of its identicalness with the original in some other way. When the court (authority) has no objection, and is also empowered by the statutory rules, it may admit - with the consent of the parties - also such a microfilm as a proof on which its decision relies.

The status of the original after the microfilm has been made

13. The advantages inherent in microfilm - i.e. replacement of the original, saving of the space taken by the original, easy handling, etc. - raise the question: what should happen to the original after it has been microfilmed?

13.1 After the preparation of the microfilm (checking, authentication) the original can be destroyed immediately. This results in space saving and enables easy handling of the document. When the microfilm enjoys preferential treatment, the original may also be substituted without difficulty.

13.2 The original cannot be destroyed immediately upon having been microfilmed, but only after the lapse of a certain time. The safe keeping of the original may be required by certain financial or judiciary interests. This solution will become effective only if the time of keeping is less than the period generally prescribed for disposal (or statutory limitation, obsolescence). In this solution, therefore the original will be preserved - for a while, after which the microfilm will be kept.

13.3 The original will be kept even after microfilming when it possesses a permanent value (archival-scientific, artistic, economic, etc. value). This method should be followed also when, e.g. the original colouring has significance and the latter does not become manifest from the microfilm or the register, or else: cannot be indicated in this manner.

13.4 The archives shall assess, whether it is necessary to keep all their documents in original, or whether they can be replaced by microfilms. This requires the continuous appraisal of the archival materials.

C. Recommendation for further proceeding

1. We recommend that the study be examined by the competent department of Unesco; in case it is accepted as a working proposal, the proper number of copies thereof be distributed for consultation to individual States and organizations according to the following schedule.

We suggest the inclusion of the following States and organizations:

International Council on Archives and, through it, the States members of this Council,

International Council on Reprography

lawyers' organizations recognized by Unesco

those States, the legislation or practice of which have been untilized in this study,

United Nations organizations (as far as necessary).

2. After processing the observations, the direction of further progress could be decided upon. Possible ways:

repeated distribution of the revised study as a recommendation,

submission of the revised study to an international conference for discussion.

APPENDIX

1.1 For the preparation of the present study the following sources were resorted to:

1.11 The replies given to the inquiry of the Committee on Microfilms of the International Council of Archives.

1.12 Information received through direct, personal contacts.

1.2 In the following list, whenever the Law or other statutory rule was directly available, we have indicated the year of enactment. Information on the laws of the European socialist countries relies on the writings of the Ministry of Justice, this is not indicated separately. In case of other countries we merely quote the information received without indicating the source.

1.3 Hereunder we are not merely indicating the numbers of the statutory rule (legal source) but also refer to the range of regulation.

2. According to the available material the mode of regulation can be classified as follows:

2.1 Overall legal regulation (direct regulation).

2.2 Solutions found in the judicial practice (indirect regulation, practice, case-law, analogy).

2.3 Restricted-range statute (for a limited range, territory, lacking a general character).

2.4 Local solutions without relating statutory rule or judicial practice (e.g. facilitation of administration, internal use non-court practice).

3. The solutions practised in the various States in respect of microfilm are the following:

3.01 ARGENTINA

Law No. 18.569 (28 January 1970) permits microfilming with the Supreme Army Command in respect of all documents and instruments. The microfilms possess the same probative force as the original provided that the rules relating to microfilming have been observed.

Law No. 18.923 (19 January 1971) on the introduction of the microfilming method with the Supreme Command of the Air Force; essentially the same provisions as in Law 18.569.

Decree on the general turnover tax (payable by the companies) (25 January 1972), Section 64 enables the preservation of microcopies instead of the original documents.

Law No. 19.931 (6 February 1972) empowers the Argentine National Bank to employ microfilming procedures in respect of its books, lists as well as the documents found in its files. Microfilms and copies have the same probative force as the originals.

Law No. 16 of 21 July 1973 amending the Code of Commerce (Merchant Law), enabling to introduce mechanization in the commercial life. The Annex refers to the fact that the documents may be preserved in photocopies subject to indicating where the original can be found (e.g. archive).

3.02 BELGIUM

Royal Decree No. 44 (25 October 1965) amending the Law of 16 March 1965 on the establishment of the General Savings and Superannuation Institute provides that the photocopies and microphotocopies made of the documents in the keeping of the Institute should have identical probative force with the original. Copies must be authenticated.

According to section 19 of Law of 2 May 1965 on postal cheques, photocopies and microcopies made of the documents in the keeping of the Postal Cheque Office shall have identical probative force with the originals, provided they have been made by, or under the control of, the said Office.

According to further information: negotiations are in course for widening the above regulation.

3.03 BRAZIL

Decree of 21 November 1968 on national archives prescribes for the archives to make microfilms from documents in their keeping which are endangered by destruction. Their further task consists of elaborating a microfilming plan on documents of historical importance. Law of 8 May 1968 establishes the rules for microfilming public documents. Accordingly, the public and private documents preserved in the archives may be microfilmed; the microfilms prepared in accordance with the said Law - including copies, certified authentic transcriptions and photos (photostat copies) made thereof - have the same legal force as the original ones; the original documents may be destroyed.

3.04 BULGARIA

There is no general statutory provision covering microfilms. Where microfilms are in use (authorities of nationwide jurisdiction) the method of microphotography is regulated in instructions (list, register, authentication, preservation). There is no special rule as to the legal validity of microfilm.

3.05 CANADA

The Evidence Act regulates the rules of evidence with the aid of documents and records, or copies. Evidence with the aid of copy is subject to an affidavit testifying that presentation of the original is impossible, and that the copy is an authentic one. According to the law a "copy" includes a photocopy of the original whether enlarged or not, the "photographic film", microfilm, plate, microphoto frame, as well as the negative of the photocopy.

3.06 CZECHOSLOVAKIA

A general regulation is under preparation; this will cover the making of microfilm and the legal validity of the latter. The statutory provisions now in force only admit the use of the photocopy of the original documents at every superior (supervising) organ. A reduction in size is permitted only to such a degree that the photocopy must remain eye-legible. The authentication of the photocopies is carried out in the same way and under the same conditions as that of the conventional copies. The information does not reveal whether the photocopy is obtained directly or with the aid of an intermediary negative film.

3.07 DENMARK

Decree No. 65 (12 February 1973) amending the enactment No. 178 (1959) on bookkeeping, permits to store the accounts on microfilm. In the cases defined by law the vouchers must be preserved even after microfilming, while the correspondence may be destroyed at once. The statutory rule also provides on the conditions of microphotography.

3.08 FEDERAL REPUBLIC OF GERMANY

There is no general valid law. There are rules in the individual Länder and on partial questions. These, however, have not been available with the exception of one federal enactment.

The instruction of the Federal Minister of Economy and Finance to the finance ministers of the Länder (21 December 1971 F/IV B. 7. S. 1160/c - 5/71) has the aim that, when the microphoto has been made according to the Guidelines, by this the organization should have performed its obligation to preserve the document; thus the original can be destroyed.

The following article refers to the probative force of microfilms in judicial practice:

Dr. Hans Jöstlein: Technische Datenträger als Beweismaterial im Zivilverfahren, Deutsche Richterzeitung, No. 12/1973. The author also deals with the probative force of the simple copy, photocopy and microfilm. The essential feature is the proper authentication of the copies. The author indicates that a draft act (bill) is being prepared on the admission of microfilm in evidence.

3.09 FINLAND

There is no special rule on the power of evidence of the microfilm. The court will decide in the course of the free consideration of evidence. The microfilm is considered as the copy of the original. The Law of 1945 concerning bookkeeping had made it possible to replace the document by microfilm, but according to the new Bookkeeping Law of 1973 this is no longer possible in every respect, because it has been made subject to a special permission issued under the law.

There are, however, rules as to the preparation of microfilm (what should be shown on the film, how to make the frame, ways of checking, etc.).

3.10 FRANCE

There is no general regulation. The copies made from microfilms have the same probative force as the original documents as long as their contents are not contested. In the latter case the original, too, has to be presented. According to a ministerial opinion given in a concrete case (1971), when the original has got lost, the general rules of proof are valid. The question is under regulation.

3.11 GERMAN DEMOCRATIC REPUBLIC

The Council of Ministers, by its resolution dated 19 September 1973, approved the Guidelines concerning the microfilming of documents and drawings. This covers the method of making the microfilm, its storage and utilization; it also deals with the status of the original document (whether it can be destroyed).

The microfilms made according to the Guidelines must be handled like the original documentation; they (the first-generation films) must not be altered. The copies and enlargements made of the first-generation films should be regarded as the authentic copies of the original documents and designs, if they coincide with the originals; they are certified authentic by persons entitled thereto.

3.12 HUNGARIAN PEOPLE'S REPUBLIC

There is no general statutory rule concerning the preparation (taking, storage, preservation, etc.) of microfilms. The proper rules of safeguard have evolved in the practice of those organizations which engage in making such microfilms. According to the 1972 Amendment of the Code of Civil Procedure, the photo (film) made of the original or the photostat copy made of either has the same probative force as the original provided that it was made by the organization keeping the document, and has provided the copy with proper authentication, or else the identity with the original has been attested in a regular manner.

3.13 INDIA

There is no generally valid statutory rule. The microfilm can operate as an indirect evidence. According to the Indian Evidence Act (1972), copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, will be included in the secondary evidence. However, there is no court ruling or statutory provision which would govern the legal effect (validity) of microfilms.

3.14 ITALY

Law No. 15 of 4 January 1968 regulating the authenticity and genuineness of the attestations and signatures in public administration, permits the public offices and private persons to substitute the documents, bookkeeping vouchers, correspondence and other writings in their keeping, by photostat copy or a negative film.

3.15 POLAND

The court practice, evolved in the wake of the Code of Civil Procedure, considers the contents of microfilm as evidence. The court may use films, photostat copies, photographs, etc. in evidence.

3.16 ROMANIA

Microfilms are made by the archives under the Act on Archives (No. 472/1971) for scientific purposes. The microfilm copies are authenticated by the institution having made the microfilm. Microfilms may be used at courts in evidence.

3.17 EL SALVADOR

Section 455 of the Code of Commerce deals with the possibility of keeping commercial books, lists, documents in the form of microfilm. It also provides that after the lapse of three years of the closing of the said book, etc., the microfilm will substitute the original (text promulgated in 1970).

3.18 SPAIN

No general rule. In some fields original documents may be substituted by microfilms, (such as general co-operative turnover tax: the Act on the amendment of the Code of Commerce permits the use of modern techniques).

In court proceedings - civil and criminal - copies are admitted, in public administrative proceedings copies authenticated by public notaries are valid.

3.19 SWEDEN

No general rule. Microfilms are used at courts; the rules of the system of free consideration of evidence apply, the court will decide what probative force to attach to them. There is a strong tende towards their replacing the original, while the latter should be permitted to be destroyed.

3.20 SOVIET UNION

There is no general rule governing microfilming. The procedure is regulated in norms issued by individual institutions. In practice detailed rules of procedure (safeguards) have developed (the mode of making the photo, keeping, authentication, registration, etc.). No special rule regulates the probative force of microfilms.

3.21 UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

There is no uniform statutory provision covering Great Britain and Northern Ireland. Separate enactments apply to England and Scotland; the English law applies for Northern Ireland inasmuch as it is extended by the Parliament of Northern Ireland. The said enactments regulate the admissibility in evidence of microfilms and their probative force in court.

3.211 ENGLAND

The Civil Evidence Act (1968) regulates the admissibility in evidence of statements produced by computers - meaning any device for storing and processing information. The Act also regulates the admissibility of documents. Evidence is taken by producing the document or its copy. In the implementation of the Act "document" includes, in addition to a document in writing - (a) any map, plan, graph or drawing; (b) any photograph; (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied; further any film, negative, tape or other device in which visual images are embodied. "Film" includes a microfilm.

3.212 SCOTLAND

The Law Reform (Miscellaneous Provisions) Act 1968 has amended the rules of evidence in civil procedure and enabled the admission in evidence of computer-produced statements (meaning all mechanical information-storing and processing device).

The Act regulates the evidence with the help of documents, "document" includes, in addition to a document in writing - (a) any map, plan, graph or drawing; (b) any photograph; (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied; further any film, negative, tape or other device in which visual images are embodied. "Film" includes a microfilm.

3.213 ENGLAND AND SCOTLAND

The Criminal Evidence Act (1965), in addition to direct oral evidence, opens the way to documentary evidence under the conditions regulated in the Act.

"Document" - in the meaning of the Act - includes all devices permitting the storage and processing of data.

The force of the Act does not extend to Northern Ireland.

In the court practice "document" also covers a film copy (including microfilm). In the given (criminal) leading case, the motor numbers of stolen automobiles, made illegible, were to be proven with the help of the microfilm copies of the factory registration cards of the automobiles showing the original motor number: (cf. "The Rule against Hearsay" - Myers v. Director of Public Prosecution 1965).

3.22 UNITED STATES OF AMERICA

In the United States a uniform recommendation on the admissibility of microfilm and their copies in evidence (UPA) has been prepared. On the strength of the latter several States drafted bills or passed laws on the use of microfilms. Up to July 1971 (source: Admissibility in Evidence of Microfilm Records, New York, 1971), a uniform law (or

similar laws in respect of business records) were passed by 42 States of the United States, as well as a federal law. Six further States have made similar enactments, with slightly limited powers. Louisiana, Mississippi and Puerto Rico have no such statutory rules. Thirty-four States also decreed that the UPA "on the admissibility of regular photocopies from commercial records and public documents" be also applied for public documents. In two States similar, but more limited range, provisions are in force; in 10 further States the general provisions in force either entrust to the public servants the decision on the admissibility of microfilmed records, or else permit the use of such copies instead of the original.

3.23 YUGOSLAVIA

No general rule on the use of microfilms. In part-fields (social security, superannuation) there is a possibility to preserve the microfilm instead of the original. The making, storage, etc. of the microfilms is regulated in the internal instructions of the institutions using microfilm in their business management. The use of microfilms is nevertheless spreading. The Courts accept the microfilm or photostat copy, if authenticated by the institution keeping the original, as an authentic document; the presentation of the original document is only rarely required.